

2-1-75

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
ROBERT P. McMANNAMA, )  
Appellant, )  
v. )  
STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY )  
and ROBERT L. and FAY )  
JACKMAN, )  
Respondents. )

PCHB No. 763

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

THIS MATTER being the appeal of a surface water appropriation permit having come on regularly for an informal hearing before the Pollution Control Hearings Board on the 9th day of May, 1975, at Spokane, Washington; and appellant Robert P. McMannama appearing pro se, and respondent Washington State Department of Ecology appearing through its assistant attorney general, Wick Dufford, and respondents Robert L. and Fay Jackman appearing pro se; and Board member present at the hearing being Walt Woodward; and the Board having considered the sworn testimony,

1 exhibits, records and arguments and having entered on the 22nd day of  
2 May, 1975, its proposed Findings of Fact, Conclusions of Law and Order;  
3 and the Board having served said proposed Findings, Conclusions and Order  
4 upon all parties herein by certified mail, return receipt requested and  
5 twenty days having elapsed from said service; and

6 Exceptions to said proposed Order and replies thereto having been  
7 received, and said replies being granted in that respondents Jackman  
8 reside near "Northport," and all exceptions being denied; and the Board  
9 being fully advised in the premises; now therefore,

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
11 Findings of Fact, Conclusions of Law and Order, dated the 22nd day of  
12 May, 1975, and incorporated by this reference herein and attached  
13 hereto as Exhibit A, are adopted and hereby entered as the Board's Final  
14 Findings of Fact, Conclusions of Law and Order herein.

15 DONE at Lacey, Washington, this 13th day of August, 1975.

16 POLLUTION CONTROL HEARINGS BOARD

17   
18 CHRIS SMITH, Chairman

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20 WALT WOODWARD, Member

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FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

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Assistant Attorney General  
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Dolores Osland  
DOLORIES OSLAND, Clerk of the  
POLLUTION CONTROL HEARINGS BOARD

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FINDINGS OF FACT,  
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This matter, the appeal of a surface water appropriation permit issued by the State Department of Ecology (hereinafter Ecology) to Robert L. and Fay Jackman, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer) at an informal hearing in the conference room of the Spokane County Juvenile Probation Office, Spokane, on May 9, 1975.

Appellant and respondents Jackman appeared pro se; respondent Ecology appeared through Wick Dufford, assistant attorney general. Ed Carr,

EXHIBIT A

Spokane court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted. Closing arguments were made.

From testimony heard, exhibits examined, closing arguments considered and transcript reviewed, the Pollution Control Hearings Board makes these

#### FINDINGS OF FACT

##### I.

Respondents Jackman, residents near Newport, own 80 acres of land in Stevens County near the Columbia River about three miles south of the United States-Canada border. They raise about 20 cattle on the property, do not live there but plan to do so. On February 7, 1974, they made Application No. S3-22521 to respondent Ecology for surface water withdrawal of 0.07 cubic foot per second (cfs) from Matthews Creek which runs in a northwesterly course through their property. The application was for domestic use and stock watering. The Jackman cattle now are watered from the banks of the creek, but the Jackmans plan, if the permit is sustained, to build a watering trough and run some of the appropriated water to it; ultimately, they plan to use another portion of the appropriated water for domestic uses in and around the residence they plan to establish on their property.

##### II.

On November 1, 1974, respondent Ecology, after determining from its records that there were no existing water withdrawal rights of record on Matthews Creek, and after having made a field examination, approved Application No. S3-22521 with a screening condition and in the reduced amount of 0.02 cfs. The amount was reduced to "reflect the actual

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 project requirements" and to be consistent with respondent Ecology's  
2 standard allotment for domestic-stock watering use in that section of  
3 Eastern Washington. An appropriation of 0.02 cfs is equivalent to about  
4 nine gallons per minute.

### 5 III.

6 Adjoining the Jackman property to the west and north is a 250-acre  
7 ranch owned by appellant, a Seattle insurance agent who leases the ranch  
8 to Patrick Graham, a 50-year resident of the Newport area. Appellant  
9 purchased the property in 1968 from John R. Purtee, the property's owner  
10 since 1938. The property, which is riparian to the Columbia River, has a  
11 history to the turn of this century and supports cattle. Graham now runs  
12 about 60 animals on the ranch. Matthews Creek enters appellant's  
13 property from the Jackman acreage. In dispute is whether the creek is  
14 tributary to the Columbia River or whether it "disappears" in a settling  
15 basin on appellant's property.

### 16 IV.

17 From time to time, various owners and lessors of appellant's property,  
18 including Purtee and Graham, have developed and used a sprinkler  
19 irrigation system from Matthews Creek to supply moisture for alfalfa, a  
20 feed crop for cattle. In the low flow late summer periods, Matthews  
21 Creek delivers about 30 gallons of water per minute to appellant's  
22 property. Cattle on appellant's property use both Matthews Creek and the  
23 Columbia River for riparian watering.

### 24 V.

25 Respondents Jackman's proposed withdrawal of 0.02 cfs (or about  
26 nine gallons per minute) would not deprive cattle on appellant's property

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

of water for riparian consumption from Matthews Creek.

VI.

In 1970, appellant filed with respondent Ecology Claim No. 1703 for a claimed water right dating from 1906 for surface water withdrawal from Matthews Creek for the irrigation of ten acres.

VII.

Prior to the approval of Application No. S3-22521, appellant protested the Jackman withdrawal on the ground that the withdrawal would impair his claimed prior right. The approval of Application No. S3-22521 is the subject of this appeal.

VIII.

Any Conclusion of Law hereinafter stated which is deemed to be a Finding of Fact is adopted herewith as same.

From these Findings, the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I.

Pursuant to RCW 90.03.290, any water withdrawal application must be granted if it meets the tests of beneficial use, water availability, existing rights and public welfare. The water law of this state also protects the rights of cattle to riparian drinking.

II.

Application No. S3-22521 is for beneficial purposes (domestic use and stock watering), is from a creek where there is water available and is not detrimental to public welfare.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

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III.

Does the application impair any existing rights? No. There are none of record on Matthews Creek. True, appellant is on record with a claimed right dating back to 1906. There is a legal process available to him whereby he can attempt to establish that claimed right, but this Board is not the proper tribunal for that effort.

IV.

Does the application destroy the riparian right of the cattle on appellant's property to drink from Matthews Creek? No. The application, if granted, undoubtedly would reduce the amount of water in Matthews Creek as it reaches appellant's property. But even in low-flow periods, there still should be some 21 gallons a minute flowing in the creek as it enters appellant's property (30 gallons minus 9 gallons equals 21 gallons).

V.

Application No. S3-22521, having met all the tests of RCW 90.03, should be granted.

VI.

Any Finding of Fact herein recited which is deemed to be a Conclusion of Law is adopted herewith as same.

Therefore, the Pollution Control Hearings Board issues this

ORDER

The appeal is denied and respondent Ecology's approval of Surface Water Application No. S3-22521 is sustained.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER



1 DONE at Lacey, Washington this 22nd day of May, 1975

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3 Walt Woodward  
4 WALT WOODWARD, Presiding Officer and  
5 member of POLLUTION CONTROL HEARINGS  
6 BOARD  
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26 FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER